

BOARD FOR JUDICIAL ADMINISTRATION



WASHINGTON
COURTS

MEETING PACKET

**FRIDAY, AUGUST 20, 2010
9:30 A.M.**

**AOC SEATAC OFFICE
SEATAC, WASHINGTON**

Board for Judicial Administration Membership

VOTING MEMBERS:

Chief Justice Barbara Madsen, Chair
Supreme Court

Judge Michael Lambo, Member Chair
District and Municipal Court Judges'
Association
Kirkland Municipal Court

Judge Marlin J. Appelwick
Court of Appeals, Division I

Judge Rebecca M. Baker
Superior Court Judges' Association
Ferry/Stevens/Pend Oreille Superior Courts

Judge C. C. Bridgewater
Court of Appeals, Division II

Judge Stephen Brown, President
District and Municipal Court Judges'
Association
Grays Harbor County District Court

Judge Ronald Culpepper
Superior Court Judges' Association
Pierce County Superior Court

Judge Susan Dubuisson
District and Municipal Court Judges'
Association
Thurston County District Court

Judge Deborah Fleck
Superior Court Judges' Association
King County Superior Court

Judge Jack Nevin
District and Municipal Court Judges'
Association
Pierce County District Court

Justice Susan Owens
Supreme Court

Judge Kevin Ringus
District and Municipal Court Judges'
Association
Fife Municipal Court

Judge Stephen Warning, President
Superior Court Judges' Association
Cowlitz County Superior Court

Judge Chris Wickham
Superior Court Judges' Association
Thurston County Superior Court

NON-VOTING MEMBERS:

Mr. Jeff Hall
State Court Administrator

Judge Laura Inveen, President-Elect
Superior Court Judges' Association
King County Superior Court

Ms. Paula Littlewood, Executive Director
Washington State Bar Association

Mr. Salvador Mungia, President
Washington State Bar Association

Judge Dennis Sweeney, Presiding Chief
Judge
Court of Appeals, Division III

Mr. Steven G. Toole, President-Elect
Washington State Bar Association

Judge Gregory Tripp, President-Elect
District and Municipal Court Judges'
Association
Spokane County District Court

Board for Judicial Administration

August 20, 2010
9:30 a.m. – Noon
AOC SeaTac Office
SeaTac, Washington

Agenda

1. Call to Order	Chief Justice Barbara Madsen Judge Michael Lambo	
2. Welcome and Introductions	Chief Justice Barbara Madsen Judge Michael Lambo	
3. Recognition of Judge Sweeney's Service as Chair of the Washington State Center for Court Research Advisory Board	Chief Justice Barbara Madsen Judge Michael Lambo	
Action Items		
4. June 18, 2010 Meeting Minutes Action: Motion to approve the minutes of the June 18 meeting	Chief Justice Barbara Madsen Judge Michael Lambo	Tab 1
5. Civil Legal Aid Oversight Committee Appointment Action: Motion to appoint Judge Erik Rohrer to the Civil Legal Aid Oversight Committee	Ms. Mellani McAleenan	Tab 2
6. Justice in Jeopardy Implementation Committee Appointment Action: Motion to appoint Judge Theresa Doyle to the Justice in Jeopardy Implementation Committee	Ms. Mellani McAleenan	Tab 3
7. Proposed WSBA Bylaws Action: Motion to approve the SCJA's revision to the membership section of the WSBA Bylaws	Judge Stephen Warning	Tab 4
8. Implementation of Revised Rules CrR 3.1 and CrRLJ 3.1 Action: Motion to recommend to the Supreme Court that the effective date of the new rule CrR 3.1 and CrRLJ 3.1 be delayed.	Judge Michael Lambo	Tab 5
Reports and Information		
9. GR 29 Work Group	Judge Rebecca Baker	Tab 6
10. BJA Dues Update	Ms. Mellani McAleenan	

11. Washington State Bar Association	Mr. Salvador Mungia Ms. Paula Littlewood	
12. Reports from the Courts Supreme Court Court of Appeals Superior Courts Courts of Limited Jurisdiction	Chief Justice Barbara Madsen Judge Dennis Sweeney Judge Stephen Warning Judge Stephen Brown	
13. Association Reports County Clerks Superior Court Administrators District and Municipal Court Administrators	Mr. Kevin Stock Ms. Delilah George Ms. Lynne Jacobs	
14. Administrative Office of the Courts	Mr. Jeff Hall	
15. Other Business Next meeting: September 17 Beginning at 9:30 a.m. at the AOC SeaTac Office, SeaTac	Chief Justice Barbara Madsen Judge Michael Lambo	

**Board for Judicial Administration
Meeting Minutes**

**June 18, 2010
AOC SeaTac Office
SeaTac, Washington**

Members Present: Judge Marlin Appelwick, Judge Rebecca Baker, Judge Stephen E. Brown, Judge Susan Dubuisson, Judge Deborah Fleck, Mr. Jeff Hall, Judge Laura Inveen, Ms. Paula Littlewood, Mr. Sal Mungia, Judge Jack Nevin, Justice Susan Owens, Judge Kevin Ringus, Judge Chris Wickham

Guests Present: Justice Mary Fairhurst (by phone), Judge Teresa Kulik (by phone), Ms. Delilah George, Mr. Joe McGuire, Ms. Barb Miner, and Judge Christine Quinn-Brintnall

Staff Present: Ms. Beth Flynn, Ms. Shannon Hinchcliffe, Mr. Dirk Marler, and Ms. Mellani McAleenan

The meeting was called to order by Judge Appelwick.

May 21, 2010 Meeting Minutes

Judge Fleck asked that the following changes be made to the minutes:

- On page 3 in the Judicial Stabilization Trust Account section, change "JSTA" in the second to last paragraph to "JSTA and Justice in Jeopardy."
- On page 5 in the last paragraph, on the last line, change "Their" to "The WSBA".

It was moved by Judge Fleck and seconded by Judge Baker to approve the May 21, 2010 meeting minutes with the recommended revisions. The motion carried.

BJA Best Practices Committee Nominations

With the appointment of Judge Jean Rietschel to King County Superior Court, she is now a Best Practices Committee nominee of the Superior Court Judges' Association (SCJA) instead of the District and Municipal Court Judges' Association (DMCJA).

It was moved by Judge Baker and seconded by Judge Brown to appoint Judge Christine Quinn-Brintnall, Judge Jean Rietschel, and Judge Jerry Roach to the BJA Best Practices Committee. The motion carried.

It was moved by Judge Wickham and seconded by Judge Baker to reappoint Judge Julie Spector to the BJA Best Practices Committee. The motion carried.

Judge Quinn-Brintnall stated that the next time the BJA Bylaws are reviewed the BJA should consider exempting the Chair of the Best Practices Committee from the two term limit requirement.

BJA Court Security Committee Nomination

It was moved by Judge Baker and seconded by Judge Ringus to appoint Mr. Ron Miles to the BJA Court Security Committee. The motion carried.

Proposed Revision to Public Trust and Confidence Committee Mission Statement

Justice Fairhurst received some concerns regarding the revision of the Public Trust and Confidence Committee mission statement. The mission statement has been revised to address the concerns and an updated draft was included in the meeting materials.

It was moved by Judge Fleck and seconded by Judge Dubuisson to approve the revisions to the Public Trust and Confidence Committee Vision, Mission and Goals Statement. The motion carried.

Public Trust and Confidence Committee Project to Add a Fifth Day to the Legislative Scholars Program

Justice Fairhurst reported that the Public Trust and Confidence Committee would like to add an extra day to the Legislative Scholars Program. The program will be held at the Temple of Justice in the courtroom and the Chief Justice's Reception Room. There is no extra cost to add the day to the program and the Legislative Scholars Program will reproduce the materials.

It was moved by Judge Dubuisson and seconded by Judge Baker to approve the request by the Public Trust and Confidence Committee to add a fifth day to the Legislative Scholars Program. The motion carried.

State Budget Forecast

Mr. Hall gave a brief update on the state budget forecast. Yesterday morning the state announced that revenue was down another \$19.5 million below the February forecast. To date, revenue has dropped \$38 million from the February forecast. Revenue growth to the state is not going to occur because the economy is recovering; if revenue does grow it will be due to increased taxes. The outlook is expected to be slow and uneven.

It is not known what will happen with the tax repeal initiative so the budget is on shaky ground.

The deficit could be in the \$3 to \$7 billion range next legislative session. The \$7 billion figure is what it would cost to fund everything, including the unfunded programs and the \$2 to 3 billion range is what it would take to cover the current items in the budget.

Whistleblower Work Group

Mr. Hall reported that a Whistleblower Work Group drafted a judicial branch whistleblower policy that would apply to employees of the Supreme Court, Court of Appeals, Law Library, Reporter of Decisions, Supreme Court Commissioner's Office, Supreme Court Clerk's Office, the Administrative Office of the Courts, the Office of Public Defense (OPD) and the Office of Civil Legal Aid (OCLA). It would not apply to judicial officers and there has been no discussion about extending it to local government employees.

It is a housekeeping item that the judicial branch has needed to do for a number of years. The branch does not currently have a policy and if a complaint were to come forward, it would be handled through the State Auditor's Office.

Any comments regarding the draft policy can be sent to Mr. Rick Neidhardt at the Administrative Office of the Courts. If there are thoughts related to local applicability, please contact Ms. McAleenan.

Trial Court Operations Funding

Judge Fleck gave an overview of the history of the Justice in Jeopardy Initiative to remind the BJA members of what was involved in securing the Justice in Jeopardy funds.

By the end of the first three years of lobbying the Legislature for Justice in Jeopardy Initiative funding, the Legislature had appropriated \$78 million per biennium to the program.

In the last few legislative sessions, the Justice in Jeopardy Initiative has lost some ground by way of funding cuts. Judge Fleck would like the BJA to discuss the possibility of asking the Legislature to restore the funding and possibly restore the original funding plan.

The OPD is considering asking the 2011 Legislature for \$7.9 million for expansion of the dependency program. They are also asking for an additional \$2.9 million in indigent defense funding. The OCLA might ask for an additional \$1 million in funding.

Mr. Hall stated that both proposals submitted to the Supreme Court Budget Committee for the Family and Juvenile Court Improvement Plan (FJCIP) were approved by the Supreme Court to go to the next stage but that does not mean they will be included in the Supreme Court's budget.

Judge Appelwick asked why the BJA would ask for funding increases in light of the cuts that have been taken recently. With the prospect of a deficit any new funding item added will come out of the existing budget. The discussion should be are these items important enough to give up funding in some areas and redirect the funding to these items?

Judge Fleck responded that the reason this request is being brought to the BJA is that there are state level agencies able to make presentations to the Supreme Court Budget Committee, especially since it revised its process of overseeing the judicial branch budget. The OPD and the OCLA have oversight committees that include legislators so they have worked within the Supreme Court budgeting process and within the judicial branch to make presentations but they can also go straight to the Legislature. Addressing court operations funding is critical when the OPD and the OCLA are making their presentations.

Judge Fleck stated that this presentation is mainly for informational purposes because no analysis has been completed for what funding could be restored.

Judge Appelwick indicated that he would like to see at this table a conversation on prioritizing. If there is ever a time to prioritize, it is during a sustained cut. At some point, there has to be some serious prioritization.

Judge Fleck stated that the BJA does need to talk about prioritization but in 2005 while facing a large budget hole, there was minimal prioritization and Justice in Jeopardy programs were funded. There was a prioritization of requesting DMCJA salary funding over juror pay funding.

Judge Fleck said they have put in so much time, utilizing so many people, that she does not want to lose funding and wants to go forward.

It was pointed out that the judiciary probably needs to be concerned about not losing existing funding.

Part of the prioritization conversation has to be the amount of money being spent for the resource. The judiciary needs to be efficient and get the most bang for the buck.

It was suggested that it might be useful to study the Becca and truancy funding to determine if the funding has a positive effect on society. This topic should be discussed at a future BJA meeting.

Washington State Bar Association (WSBA)

Mr. Mungia reported that Mr. Steve Toole will take over as President of the WSBA in September and Mr. Steve Crossland will be the new President-elect.

Mr. Mungia would like the WSBA Bylaws revisions to be completed before his term is up. Judge Stephen Warning and Judge Marilyn Paja are meeting with the WSBA regarding the WSBA Bylaws revisions.

There has been great participation in the Campaign for Equal Justice by judges, the WSBA Board of Governors, the Pierce County Bar Association Trustees, and the Washington Young Lawyers Association Trustees. The WSBA was awarded the Harrison Tweed award by the American Bar Association for their achievements in advancing equal access to justice in Washington.

Ms. Littlewood reported that the WSBA's new seminar facility opened this week and it has a dedicated webcasting studio. The WSBA will begin webcasting seminars across the state.

The WSBA is discussing launching Citizen Law Academies across the state. The academies would include six to nine weeks of free training about civics and the rule of law.

Reports from the Courts

Supreme Court: Justice Owens reported that there are two weeks left in the spring term. There are two contested Supreme Court elections that will keep all of the justices involved and interested during the summer and perhaps into the fall.

Court of Appeals: Judge Kulik reported that the Court of Appeals is continuing work on budget reductions and expects to finalize decisions by the end of the summer.

Superior Courts: Judge Fleck reported that the Superior Court Judges' Association (SCJA) identified three judges to participate with the WSBA on the WSBA Bylaws revision. The SCJA is also very interested in the fee surcharge issue that was discussed at the BJA meeting last month and there is a meeting on June 30 regarding the issue. The SCJA is working on their legislative agenda. Judge Inveen is the newly elected SCJA President-elect.

Courts of Limited Jurisdiction: Judge Brown welcomed the new District and Municipal Court Judges' Association (DMCJA) members of the BJA: Judge Ringus and Judge Gregory Tripp. The DMCJA had a great joint Spring Conference with the District and Municipal Court Management Association. The facility and food were marginal but

the conference itself was great. Chief Justice Madsen and Justice Owens participated and Mr. Mungia was a great speaker at their luncheon.

Association Reports

Superior Court Administrators: Ms. George reported that the Superior Court Administrators recently established a mentorship program for new superior court administrators. They paired up some new administrators with mentors and Ms. George will report back at a future meeting on how the mentor program is working. They are currently updating their court administrator deskbook that lists all the various case and court rules applicable to how their offices are run.

District and Municipal Court Administrators: Mr. McGuire echoed Judge Brown's remarks on the joint conference last month. The DMCMA is implementing the changes from the last legislative session, many of which are effective June 10. They also put together training for court staff.

Administrative Office of the Courts

Mr. Hall reported that the fiscal year is wrapping up and the Administrative Office of the Courts (AOC) is extending their contract with Adobe Connect. The AOC is closing out the fiscal year which is keeping the fiscal staff very busy.

The AOC received a furlough reduction of 10 days for all staff. AOC Leadership made the decision not to close the agency for set furlough days and are letting staff choose their own furlough days which will result in a few limited service days. November 12 will have large number of staff gone and several other days will see 10-20% of the staff out on furlough. AOC will also experience the loss of time working over 40 hours during furlough weeks. Mr. Hall will send a notice to courts regarding AOC's furloughs and notifying them of the limited service days.

There being no further business, the meeting was adjourned.



Washington State Civil Legal Aid Oversight Committee

1206 Quince St. SE
Olympia, WA 98504
MS 41183
360-704-4135

Judge Zulema Hinojos-Fall, Chair
Thomas A. Brown, Vice-Chair
Hon. Lesley Allan
Rep. Jay Rodne
Rep. Jamie Pedersen
Sen. Linda Evans Parlette
Sen. Adam Kline
Carolyn Estrada
Hon. Paul A. Bastine (Ret.)
Hon. Erik Rohrer

June 11, 2010

Hon. Barbara Madsen, Chief Justice
Hon. Michael Lambo, Co-Chair
Board for Judicial Administration
Temple of Justice
P.O. Box 41174
Olympia, WA 98504-1174

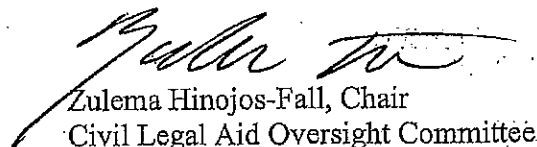
Re: Reappointment of Judge Erik Rohrer to the Civil Legal Aid Oversight Committee

Dear Chief Justice Madsen and Judge Lambo:

The bipartisan Civil Legal Aid Oversight Committee was created by the Washington State Legislature to oversee the activities of the Director of the Office of Civil Legal Aid and to make recommendations to the Washington State Legislature, the Supreme Court and the Access to Justice Board on matters relating to the provision of state-funded civil legal aid services. The Oversight Committee is composed of eleven persons, two of whom are to be appointed by the Board for Judicial Administration.

On June 20, 2007, the BJA appointed Clallam County District Court Judge Erik Rohrer to serve a full term as a member of the Oversight Committee. Judge Rohrer has been a diligent member of and active contributor to the work of the Committee. This is to advise that Judge Rohrer's term ends on June 30, 2010. Judge Rohrer has indicated his interest in continuing to serve on the Oversight Committee and he is eligible for reappointment for a second full term. By this letter I am requesting that the Board for Judicial Administration reappoint Judge Erik Rohrer to serve on the Civil Legal Aid Oversight Committee for the term commencing July 1, 2010 and ending on June 30, 2013.

Sincerely,


Zulema Hinojos-Fall, Chair
Civil Legal Aid Oversight Committee

CC: Judge Erik Rohrer
Judge Stephen Brown, DMCJA President
Jim Bamberger, Director, Office of Civil Legal Aid

Board for Judicial Administration
Nomination Form for BJA Committee Appointment

BJA Committee: Justice in Jeopardy Implementation Committee
(i.e. Best Practices, Court Security, Justice in Jeopardy, Long-Range Planning, and Public Trust and Confidence)

Nominee Name: Judge Theresa Doyle

Nominated By: SCJA
(i.e. SCJA, DMCJA, etc.)

Term Begin Date: Back date to February 1, 2010

Term End Date: January 31, 2012

Has the nominee served on this subcommittee in the past? Yes ☐ No ☒

If yes, how many terms have been served and dates of terms: N/A

Additional information you would like the BJA to be aware of regarding the nominee:

Statement of Interest:

"I am interested in joining the above committee and believe my experience and interest in these issues would benefit the SCJA and BJA.

First, I have 12 years of experience on the bench. Six of those years were on a court or limited jurisdiction. The funding issues are different for the lower courts and I understand the differences.

Second, I spend most of my career as a public defender, and am very aware of the problems with funding indigent defense.

Third, I am not on any SCJA committees and have recently become an empty-nester. Thus, I have the time to devote to the work.

Finally, and perhaps most important, I have followed the efforts of my colleagues, Judge Fleck and McDermott, regarding Justice in Jeopardy and would like to contribute to these important

efforts.”

Please send completed form to:

Beth Flynn
Administrative Office of the Courts
PO Box 41174
Olympia, WA 98504-1174
beth.flynn@courts.wa.gov



WSBA

BOARD OF GOVERNORS

Catherine L. Moore
Governor, Seventh East District

phone: 206.683.2137
e-mail: cmoore@drizzle.com

August 2, 2010

The Honorable Barbara Madsen
Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504

The Honorable Michael Lambo
Kirkland Municipal Court
11515 NE 118th St
P.O. Box 678
Kirkland, WA 98083

Dear Chief Justice Madsen and Judge Lambo:

Enclosed please find, as requested in your letter of January 20, 2010, on behalf of the Board for Judicial Administration, the BOG's Bylaws Review Committee's final draft proposal of the WSBA bylaws on judicial membership. The current proposal differs markedly from the draft forwarded to BJA on April 20, 2010, and is the result of many months of work by the WSBA Bylaws Review Committee to address concerns raised by a number of judges in their individual capacities as well as the Superior Court Judges Association, and the District and Municipal Court Judges Association.

At its April 23, 2010, WSBA BOG meeting, the BOG took a preliminary vote on the judicial membership proposal submitted by the Bylaws Review Committee. The BOG reserved final vote pending the resolution of the status of Administrative Law Judges and the standard to be used for disclosure of prior judicial disciplinary action. Since that time, the Bylaws Review Committee, at the request of the District and Municipal Court Judges Association, the Superior Court Judges Association, individual superior court judges, members of the federal bench including Chief Judge Robert Lasnik, as well as representatives from the Washington State Office of Administrative Hearings and the Washington State Board of Industrial Insurance Appeals, has amended the judicial membership proposal such that it is now significantly different from the version preliminarily adopted by the BOG in April. The current revised judicial membership proposal will be presented to the BOG for a final vote at its September 23, 2010 meeting. The BOG at its July 24, 2010, meeting directed the Bylaws Review committee to submit the current

Working Together to Champion Justice

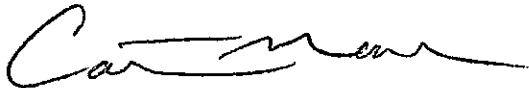
4742 42nd Avenue SW / Seattle, WA 98116

proposal to the BJA for review and comment prior to the WSBA BOG meeting scheduled for September 23, 2010.

As the BJA is probably aware, the current judicial membership proposal has its supporters and its opponents. Since October 2009, WSBA President Salvador Mungia, Executive Director Paula Littlewood, WSBA Treasurer Geoff Gibbs, and I, have met with various judges associations and individual judges presenting the general concepts behind the proposed changes to the current WSBA judicial membership bylaws, as well as the specifics of the recommended changes. We all remain willing and available to answer any questions or address any concerns members of BJA may have regarding the current proposal. The Bylaws Review Committee welcomes and looks forward to receiving the BJA's comments. We would greatly appreciate any guidance the BJA can offer on the issue of mandatory membership as well as specific suggestions for provisions that may still be of concern to particular BJA members.

Thank you for BJA's consideration of the proposed revisions to the WSBA judicial membership bylaws. We look forward to BJA's comments and remain available and willing to provide any information the BJA may request.

Most sincerely,



Catherine L. Moore

Encl: Bylaws Review Committee's judicial membership proposal
Judicial Bylaws Chart

cc: Superior Court Judges Association
District and Municipal Court Judges Association
Federal District Court Chief Judge Robert Lasnik

Working Together to Champion Justice

4742 42nd Avenue SW / Seattle, WA 98116

III. MEMBERSHIP

A. CLASSES OF MEMBERSHIP.

There shall be four classes of membership with the qualifications, privileges and restrictions specified.

1. Active.

Any lawyer who has been duly admitted to the practice of law in the State of Washington pursuant to APR 3, 5, or 18, and who complies with these Bylaws and the Rules of the Supreme Court of the State of Washington, and who has not changed to another membership class or been suspended or disbarred shall be an Active member.

a. Active membership in the Bar grants the privilege to fully engage in the practice of law. Upon payment of the Active annual license fee and assessments, compliance with these Bylaws and Rules of the Supreme Court of Washington, and compliance with other licensing requirements, Active members are fully qualified to vote, hold office and otherwise participate in the affairs of the Bar.

b. Active members may:

1. Fully engage in the practice of law;
2. Be appointed to serve on any committee, board, panel, council, task force, or other entity of the Bar;
3. Vote in Bar matters and hold office therein; and
4. Join WSBA Sections as voting members.

c. All persons who become members of the Bar must first do so as an Active member.

2. Inactive.

There are three types of inactive membership: "Inactive-Lawyer," "Inactive-Disability," and "Inactive-Honorary."

a. Inactive members shall not practice law in Washington, nor engage in employment or duties in the State of Washington that constitute the practice of law. Inactive members are not eligible to vote in Bar matters or hold office therein, or serve on any committee, board, or panel.

b. Inactive members may:

1. Join WSBA Sections as non-voting members, if allowed under the Section's bylaws. This does not include eligibility to join as voting members;

2. Continue their affiliation with the Bar;
 3. Change their membership class to Active pursuant to these bylaws; and
 4. Request a free *Bar News* subscription.
- c. Types of Inactive membership:
1. *Inactive-Lawyer*: Inactive-Lawyer members must pay an annual license fee in an amount established by the BOG and as approved by the Supreme Court. They are not required to earn or report MCLE credits while Inactive, but may choose to do so, and may be required to do so to return to Active membership.
 2. *Inactive-Disability*: Inactive-Disability members are not required to pay a license fee, or earn or report MCLE credits while Inactive-Disability, but they may choose to do so, and they may be required to earn and report MCLE credits to return to Active membership.
 3. *Inactive-Honorary*: All members who have been Active or Judicial, or a combination of Active and Judicial, members for 50 years may elect to become Inactive-Honorary members of the Bar. Inactive-Honorary members are not required to pay a license fee. A member who otherwise qualifies for Inactive-Honorary membership but wants to continue to practice law in any manner must be an Active member, or if applicable, an Emeritus/Pro Bono member.

3. Judicial Members. *[Effective through December 31, 2011]*

An Active member may become a Judicial member of the Bar by notifying the Executive Director when the member is one of the following:

- a. A judge or former judge of the courts of record in the State of Washington, or the courts of the United States.
- b. A full-time or former full-time judge in the district or municipal courts in the State of Washington.
- c. A full-time or former full-time commissioner or magistrate in the courts of record or in the district or municipal courts in the State of Washington, or in the courts of the United States.
- d. A full-time administrative law judge in the State of Washington.
- e. A full-time Tribal Court judge in the State of Washington.
- f. Judicial members are deemed inactive members and shall not engage in the practice of law. Judicial members are not required to pay the annual membership fee required of inactive members in Article II, Section E of these Bylaws.

3. Judicial. [Effective January 1, 2012]

- a. An Active member may qualify to become a Judicial member of the Bar if the member is one of the following:
 - 1. A current judge, commissioner, or magistrate judge of the courts of record in the State of Washington, or the courts of the United States, including Bankruptcy courts;
 - 2. A current judge, commissioner, or magistrate in the district or municipal courts in the State of Washington, provided that such position requires the person to be a lawyer;
 - 3. A current senior status or recall judge in the Courts of the United States;
 - 4. An administrative law judge, which shall be defined as either:
 - (a) Current federal judges created under Article I of the United States Constitution, excluding Bankruptcy court judges, or created by the Code of Federal Regulations, who by virtue of their position are prohibited by the United States Code and/or the Code of Federal Regulations from practicing law; or
 - (b) Full-time Washington State administrative law judges in positions created by either the Revised Code of Washington or the Washington Administrative Code;
 - or
 - 5. A current Tribal Court judge in the State of Washington.
- b. Members **not otherwise qualified for judicial membership under (1) through (4) above** and who serve full-time, part-time or ad hoc as *pro tempore* judges, commissioners or magistrates are not eligible for judicial membership.
- c. Judicial members, whether serving as a judicial officer full-time or part-time, may not engage in the practice of law and may not engage in mediation or arbitration for remuneration outside of their judicial duties.
- d. Judicial members may:
 - 1. Practice law only where permitted by the then current Washington State Code of Judicial Conduct as applied to full-time judicial officers;
 - 2. Be appointed to serve on any task force, council or Institute of the Bar; and

3. Be non-voting members in WSBA Sections, if allowed under the Section's bylaws.
- e Nothing in these bylaws shall be deemed to prohibit a judicial member from carrying out their judicial duties.
 - f Judicial members are required to provide the member registry information required of other members, and are to provide the Bar with any changes to such within 10 days of any change.
 - g Judicial members are required to inform the Bar within 10 days when they retire or when their employment situation has otherwise changed so as to cause them to be ineligible for Judicial membership, and must apply to change to another membership class or to resign. Judicial members desiring to change membership class to Active or Emeritus/Pro Bono are required to pass a character and fitness review essentially equivalent to that required of applicants for admission to the Bar. Judicial members seeking to transfer to Active must disclose, at the time of the requested transfer, any pending public charges and/or substantiated public discipline of which the member is aware.
 - h Judicial members must pay any required license fee that may be established by the Bar, subject to approval by the Supreme Court, for this membership class. Notices, deadlines, late fees, and other consequences of failing to pay any required fees and assessments shall be consistent with those established for Active members.
 - i Administrative law judges who are judicial members shall be maintained in their assigned reporting group for mandatory continuing legal education purposes, and shall report earned credits to the Bar in accordance with the reporting requirements of that group. Either judicial continuing education credits or lawyer continuing legal education credits may be applied to the credit requirement for judicial members; if judicial continuing education credits are applied, the standards for determining accreditation for judicial continuing education courses will be accepted as establishing compliance.
 - j. WSBA's disciplinary authority over judicial members is governed exclusively by ELC 1.2 and RPC 8.5.

4. Emeritus/Pro Bono. A member may become an Emeritus/Pro Bono member by complying with the requirements of Rule 8(e) of the Admission to Practice Rules, including payment of any required license fee and assessment, and passing a character and fitness review. Emeritus/Pro Bono members may not engage in the practice of law except as permitted under APR 8(e), but may:
 - a. Be appointed to serve on any task force, council, or Institute of the Bar. In addition, up to two Emeritus/Pro Bono members are permitted to serve on the Pro Bono Legal Aid Committee (PBLAC);
 - b. Join WSBA Sections, if permitted under the Section's bylaws;
 - c. Request a free *Bar News* subscription.

B. REGISTER OF MEMBERS.

1. All WSBA members, regardless of membership class, must furnish the information below to the Bar:
 - a. physical residence address;
 - b. principal office address and telephone;
 - c. such other data as the Board of Governors or Washington Supreme Court may from time to time require of each memberand shall promptly advise the Executive Director in writing of any change in this information within 10 days of such change.
2. The Executive Director shall keep records of all members of the Washington State Bar Association, including, but not limited to:
 - a. physical residence address furnished by the member;
 - b. principal office address and telephone number furnished by the member;
 - c. date of admittance;
 - d. class of membership;
 - e. date of transfer(s) from one class to another, if any;
 - f. date and period(s) of administrative suspensions, if any;
 - g. date and period of disciplinary actions or sanctions, if any including suspension and disbarment;
 - h. such other data as the Board of Governors or Washington Supreme Court may from time to time require of each member.
3. Any member residing out-of-state must file with the Bar, on such form as the Bar may prescribe, the name and physical street

address of a designated resident agent within the State of Washington for the purpose of receiving service of process ("resident agent"). Service to such agent shall be deemed service upon or delivery to the lawyer. The member must notify the Bar of any change in resident agent within 10 days of any such change. Any member required to designate a resident agent who fails to do so, or who fails to notify the Bar of a change in resident agent, shall be subject to administrative suspension pursuant to these bylaws and/or the Admission to Practice Rules.

4. Any member who fails to provide the Bar with the information required to be provided pursuant to these bylaws, or to notify the Bar of any changes in such information within 10 days, shall be subject to administrative suspension pursuant to these bylaws and/or the Admission to Practice Rules..

C. CHANGE OF MEMBERSHIP CLASS TO ACTIVE.

1. Transfer from Inactive to Active.

a. An Inactive-Lawyer or Inactive-Honorary member may transfer to Active by:

1. paying an application and/or investigation fee and completing and submitting an application form, all required licensing forms, and any other required information;
2. reporting at least 45 approved MCLE credits earned within the six years preceding return to Active and paying any outstanding MCLE late fees that are owed. Members returning to Active from Inactive will be reinstated to the MCLE reporting group they were in at the time of transfer to Inactive. However, if the member has been Inactive or a combination of Suspended and Inactive for less than one year, and the member is in an MCLE reporting group that was required to report during the time the member was Inactive and/or Suspended, the member must establish that the member is compliant with the MCLE reporting requirements for that reporting period before the member can change to Active;
3. passing a character and fitness review essentially equivalent to that required of all applicants for admission to the Bar; and
4. paying the current Active license fee, including any mandatory assessments, less any license fee (not including late fees) and assessments paid as an Inactive member for the same year.

b. In addition to the above requirements, any member seeking to change to Active who was Inactive or any combination of

Suspended and Inactive for more than six consecutive years must establish that the member has earned a minimum of 45 approved credits of Continuing Legal Education in a manner consistent with the requirement for one reporting period for an Active member. In addition to the 45 credits, such member must complete a reinstatement/admission course sponsored by the Bar and accredited for a minimum of 15 live CLE credits, which course shall comply with the following minimum requirements:

- 1) At least four to six credit hours regarding professional responsibility and Washington's Rules of Professional Conduct, to include proper handling of client funds and IOLTA and other trust accounts, communications with clients, etc.; and
- 2) At least three credit hours regarding legal research and writing.
- 3) The remaining credit hours shall cover areas of legal practice in which the law in Washington may be unique or may differ significantly from the law in other U.S. jurisdictions, or in which the law in Washington or elsewhere has changed significantly within the previous 10 years.

Any member completing such course shall be entitled to credit towards mandatory continuing legal education requirements for all CLE credits for which such reinstatement/admission course is accredited. It is the member's responsibility to pay the cost of attending the course. The member shall comply with all registration, payment, attendance, and other requirements for such course, and shall be responsible for obtaining proof of attendance at the entire course and submitting or having such proof submitted to the Bar.

Periods of administrative and/or disciplinary suspension occurring immediately before or after a change to Inactive shall be included when determining whether a member must take the readmission course. For purposes of determining whether a member has been Inactive and/or Suspended for more than six consecutive years, the period continues to run until the change to Active membership is completed, regardless of when the application is submitted to the Bar.

- c. An Inactive-Disability member may be reinstated to Active pursuant to Title 8 of the Rules for Enforcement of Lawyer Conduct. Before being transferred to Active, after establishing compliance with the ELC, the member also must comply with

the requirements in these bylaws for Inactive-Lawyers to change to Active.

- d. Any member who has transferred to Inactive during the pendency of grievance or disciplinary proceedings may not be transferred to Active except as provided herein and may be subject to such discipline as may be imposed under the Rules for Enforcement of Lawyer Conduct by reason of any grievance or complaint.

2. Transfer from Judicial to Active.

A Judicial member may request to transfer to Active. Upon a Judicial member's resignation, retirement, or completion of such member's term of judicial office, such member must notify the Bar within 10 days, and any Judicial member desiring to continue his/her affiliation with the WSBA must change to another membership class within the Bar. A Judicial member may transfer to Active by:

- a. paying an application and/or investigation fee and completing and submitting an application form, all required licensing forms, and any other required information;
- b. paying the then current Active license fee, including any mandatory assessments, less any license fee and assessments paid as a Judicial member for the same licensing year;
- c. passing a character and fitness review essentially equivalent to that required of applicants for admission to the Bar. Judicial members seeking to transfer to Active must disclose at the time of the requested transfer any pending public charges and/or substantiated public discipline of which the member is aware; and
- d. complying with the requirements for members returning from Inactive to Active, including completing a 15-credit reinstatement/admission course tailored to judges if a Judicial member for six or more consecutive years. Either judicial continuing education credits or lawyer continuing education credits may be applied to the credit requirement for Judicial members transferring to Active. If judicial continuing education credits are applied, the standards for determining accreditation for judicial continuing education courses will be accepted as establishing compliance.

3. Transfer from Emeritus/Pro Bono to Active.

An Emeritus/Pro Bono member may transfer to Active by complying with the requirements for members returning from Inactive to Active.

4. Referral to Character and Fitness Board.

All applications for readmission to Active membership shall be reviewed by WSBA staff for purposes of determining whether any of the factors set forth in APR 24.2(a) are present. All applications that reflect one or more of those factors shall be referred to Bar Counsel for review, who may conduct or direct such further investigation as is deemed necessary. Applying the factors and considerations set forth in APR 24.2, Bar Counsel shall refer to the Character and Fitness Board for hearing any applicant about whom there is a substantial question whether the applicant currently possesses the requisite good moral character and fitness to practice law. The Character and Fitness Board shall conduct a hearing and enter a decision as described in APR 20-24, except that all decisions and recommendations shall be transmitted to the applicant and Bar Counsel, and that the applicant may request that the Board of Governors review a recommendation, with such review to be on the record only, without oral argument. If no review is requested, the decision and recommendation of the Character and Fitness Board shall become final. The Character and Fitness Board, and (on review) the Board of Governors, have broad authority to withhold a transfer to active or to impose conditions on readmission to Active membership, which may include retaking and passing the Washington State Bar examination, in cases where the applicant fails to meet the burden of proof required by APR 20-24. The member shall be responsible for the costs of any investigation, bar examination, or proceeding before the Character and Fitness Board and Board of Governors.

D. CHANGE OF MEMBERSHIP CLASS TO INACTIVE.

1. Any Active, Judicial, or Emeritus/Pro Bono member who is not Suspended or Disbarred shall become an Inactive-Lawyer member when the member files a written request for Inactive membership with the Executive Director and that request is approved.

2. Members are transferred to Inactive-Disability pursuant to Title 8 of the Rules for Enforcement of Lawyer Conduct. Any member seeking to transfer from Inactive-Disability to Inactive-Lawyer must first establish that the member has complied with the requirements of Title 8 of the ELC, and then must submit a written request to make the change and comply with all applicable licensing requirements for Inactive-Lawyer members.

3. All members who have been Active or Judicial, or a combination of Active and Judicial, members for 50 years may qualify for Inactive-Honorary membership. A qualified member may request to change to Inactive-Honorary membership by submitting a written request and any required application.

4. An Active member may apply to change from Active to Inactive-Lawyer while grievances or disciplinary proceedings are pending against

such member. Such transfer, however, shall not terminate, stay or suspend any pending grievance or proceeding against the member.

E. CHANGE OF MEMBERSHIP CLASS TO JUDICIAL.

An Active member may request to become a Judicial member of the Bar by submitting a written request on judicial letterhead and any required application, and complying with the provisions of these Bylaws.

F. VOLUNTARY RESIGNATION.

Voluntary resignation may apply in any situation in which a member does not want to continue practicing law in Washington for any reason (including retirement from practice) and for that reason does not want to continue membership in the Bar. A member may voluntarily resign from the Bar by submitting a written request for voluntary resignation to the Executive Director. If there is a disciplinary investigation or proceeding then pending against the member, or if the member had knowledge that the filing of a grievance of substance against such member was imminent, resignation is permitted only under the provisions of the Rules for Enforcement of Lawyer Conduct. A member who resigns from the WSBA cannot practice law in Washington in any manner. A member seeking reinstatement after resignation must comply with these bylaws.

G. ANNUAL LICENSE FEES AND ASSESSMENTS.

1. License Fees.

a. Active Members.

1. Effective 2010, and all subsequent years, the annual license fees for Active members shall be as established by resolution of the Board of Governors, subject to review by the state Supreme Court. First time admittees not admitted elsewhere who take and pass the Washington Bar exam and are admitted in the first six months of the calendar year in which they took the exam will pay 50% of the full active fee for that year. First time admittees not admitted elsewhere who take and pass the Washington Bar exam and are admitted in the last six months of the calendar year in which they took the exam will pay 25% of the full active fee for that year. Persons not admitted elsewhere who take and pass the Washington Bar exam in one year but are not admitted until a subsequent year shall pay 50% of the full active fee for their first two license years after admission. Persons admitted in one calendar year in another state or territory of the United States or in the District of Columbia

by taking and passing a bar examination in that state, territory, or district, who become admitted in Washington in the same calendar year in which they took and passed the exam, shall pay 50% of the full active fee if admitted in Washington in the first six months of that calendar year and 25% of the full active fee if admitted in Washington in the last six months of that calendar year. All persons in their first two full licensing years after admission in any jurisdiction shall pay 50% of the full active fee.

2. An Active member of the Association who is activated from reserve duty status to full-time active duty in the Armed Forces of the United States for more than 60 days in any calendar year, or who is deployed or stationed outside the United States for any period of time for full-time active military duty in the Armed Forces of the United States shall be exempt from the payment of license fees and assessments for the Lawyers' Fund for Client Protection upon submitting to the Executive Director satisfactory proof that he or she is so activated, deployed or stationed. All requests for exemption must be postmarked or delivered to the Association offices on or before February 1st of the year for which the exemption is requested. Eligible members must apply every year they wish to claim the exemption. Each exemption applies for only the calendar year in which it is granted, and exemptions may be granted for a maximum total of five years for any member. Granting or denying an exemption under this provision is within the sole discretion of the Executive Director and is not appealable.

b. Inactive Members.

1. Effective 2010 and subsequent years, the annual license fee for Inactive members shall be as established by resolution of the Board of Governors and as approved by the state Supreme Court. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members shall apply to Inactive-Lawyer members.

2. Inactive-Honorary and Inactive-Disability members shall be exempt from license fees.

c. Judicial Members. *[Effective January 1, 2012]*

Judicial members shall pay the annual license fee required of Inactive-Lawyers members. Except for the amount of the license

fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members shall apply to Judicial members.

d. Emeritus/Pro Bono Members

Emeritus/Pro Bono members shall pay the annual license fee required of Inactive-Lawyer members. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members shall apply to Emeritus/Pro Bono members.

2. Assessments.

Members shall pay the Lawyers' Fund for Client Protection assessment, and any other assessments, as ordered by the Supreme Court.

3. Deadline and Late Payment Fee.

a. License fees and mandatory assessments shall be payable on or before February 1st of each year, in such manner or on such form as is required by the WSBA. Members who pay their license fees on or after February 2nd shall be assessed a late payment fee of 30% of the total amount of the license fees required for that membership class. License fees for newly admitted members shall be due and payable at the time of admission and registration, and are not subject to the late payment fee.

b. Notices required for the collection of license fees, late payment fees, and/or assessments shall be mailed one time by the Executive Director to the member's address of record with the Bar by registered or certified mail. In addition to the written notices, the Bar shall make one attempt to contact the member at the telephone number(s) the member has made of record with the Bar and shall speak to the member or leave a message, if possible. The Bar shall also make one attempt to contact the member at the member's e-mail address of record with the Bar.

4. Rebates /Apportionments.

No part of the license fees shall be apportioned to fractional parts of the year, except as provided for new admittees by the Board of Governors. After February 1st of any year, no part of the license fees shall be rebated by reason of death, resignation, suspension, disbarment or change of membership class.

5. License Fee Exemptions Due to Hardship.

In case of proven extreme financial hardship, which must entail a current household income equal to or less than 200% of the federal poverty level **as determined at the time of the application for hardship exemption**, the Executive Director may grant a one-time exemption from payment of annual license fees by any Active member. Hardship exemptions are for one licensing period only, and a request must be submitted on or before February 1st of the year for which the exemption is requested. Denial of an exemption request is not appealable.

6. License fee referendum.

Once approved by the Board of Governors, license fees shall be subject to the same referendum process as other BOG actions, but may not be modified or reduced as part of a referendum on the WSBA budget. The membership shall be timely notified of the BOG resolutions setting license fees both prior to and after the decision, by posting on the WSBA website, e-mail, and publication in the *Bar News*.

H. SUSPENSION.

1. Interim Suspension.

Interim suspensions may be ordered during the course of a disciplinary investigation or proceeding, as provided in the Rules for Enforcement of Lawyer Conduct, and are not considered disciplinary sanctions.

2. Disciplinary Suspension.

Suspensions ordered as a disciplinary sanction pursuant to the Rules for Enforcement of Lawyer Conduct are considered disciplinary suspensions.

3. Administrative Suspension.

a. Administrative suspensions are neither interim nor disciplinary suspensions, nor are they disciplinary sanctions. A member may be administratively suspended for the following reasons:

1. Nonpayment of license fees or late-payment fees;
2. Nonpayment of any mandatory assessment (including without limitation the assessment for the Lawyers' Fund for Client Protection) (APR 15(d));
3. Failure to file a trust account declaration (ELC 15.5(b));
4. Failure to file an insurance disclosure form (APR 26(c));
5. Failure to comply with mandatory continuing legal education requirements (APR 11);
6. Nonpayment of child support (APR 17);
7. Failure to designate a resident agent (APR 5(f));

8. Failure to provide a current address or to notify the Bar of a change of address or other information required by APR 13(b) within 10 days after the change (APR 13(b)); and

9. For such other reasons as may be approved by the Board of Governors and the Washington Supreme Court.

b. Unless requirement for hearing and/or notice of suspension are otherwise stated in these bylaws or the APR, ELC, or other applicable rules, a member shall be provided notice of the member's failure to comply with requirements and of the pendency of administrative suspension if the member does not cure the failure within 60 days of the date of the written notice, as follows:

1. Written notice of non-compliance shall be sent one time by the Executive Director to a member at the member's address of record with the Bar by registered or certified mail. Such written notice shall inform the member that the Bar will recommend to the Washington Supreme Court that the member be suspended from membership and the practice of law if the member has not corrected the deficiency within 60 days of the date of the notice.

2. In addition to the written notice described above, the Bar shall make one attempt to contact the member at the telephone number(s) the member has made of record with the Bar and shall speak to the member or leave a message, if possible. The Bar shall also make one attempt to contact the member at the member's e-mail address of record with the Bar.

c. Although not required to provide any additional notice beyond what is described above, the Bar may, in its sole discretion, make such other attempt(s) to contact delinquent members as it deems appropriate for that member's situation.

d. As directed by the Supreme Court, any member failing to correct any deficiency after two months' written notice as provided above must be suspended from membership. The Executive Director must certify to the Clerk of the Supreme Court the name of any member who has failed to correct any deficiency, and when so ordered by the Supreme Court, the member shall be suspended from membership in the Bar and from the practice of law in Washington. The list of suspended members may be provided to the relevant courts or otherwise published at the discretion of the Board of Governors.

4. A member may be suspended from membership and from the practice of law for more than one reason at any given time.

I. CHANGING STATUS AFTER SUSPENSION.

1. Upon the completion of an ordered disciplinary or interim suspension, or at any time after entry of an order for an administrative suspension, a suspended member may seek to change status from suspended to any other membership class for which the member qualifies at the time the change in status would occur.

2. Before changing from suspended status, a member who is suspended pursuant to an interim or disciplinary suspension must comply with all requirements imposed by the Court and/or the ELC in connection with the disciplinary or interim suspension. Additionally, such member must comply with all other requirements as stated in these bylaws.

3. If a member was suspended from practice for more than one reason, all requirements associated with each type of suspension must be met before the change from suspended status can occur.

4. A suspended member may seek to change status by:

a. paying the required license fee and any assessments for the licensing year in which the status change is sought, for the membership class to which the member is seeking to change. For members seeking to change to Active or any other status or membership class from suspension for nonpayment of license fees, the required license fee shall be the current year's license fee and assessments, the assessments for the year of suspension, and double the amount of the delinquent license fee and late fees for the licensing year that resulted in the member's suspension;

b. completing and submitting to the Bar an application for change of status, any required or requested additional documentation, and any required application or investigation fee, and cooperating with any additional character and fitness investigation or hearing that may be required; and

c. completing and submitting all licensing forms required for the licensing year for the membership class to which the member is seeking to change.

d. In addition to the above requirements:

1) Any member seeking to change to Active who was Suspended, or any combination of Suspended and Inactive, for less than six consecutive years must establish that within the six years prior to the requested change in status, the member has earned a minimum of 45 credits of continuing legal education in a manner consistent with the requirements for one reporting period for an Active member. However, if the member has been

Suspended and/or Inactive for less than one year and the member is in the MCLE reporting group that was required to report during the time the member was Suspended and/or Inactive, the member must establish that the member is compliant with the MCLE credits the member would have been required to report that period.

2) Any member seeking to change to Active who was Suspended, or any combination of Suspended and Inactive, for more than six consecutive years must establish that the member has earned a minimum of 45 credits of continuing legal education in a manner consistent with the requirement for one reporting period for an Active member and completing a reinstatement/admission course sponsored by the Bar and accredited for a minimum of 15 live CLE credits, which course shall comply with the following requirements:

a) At least four to six credit hours regarding law office management and professional responsibility and Washington's Rules of Professional Conduct, to include proper handling of client funds and IOLTA and other trust accounts, communications with clients, law practice issues, etc., and

b) At least three credit hours regarding legal research and writing.

c) The remaining credit hours shall cover areas of legal practice in which the law in Washington may be unique or may differ significantly from the law in other U.S. jurisdictions, or in which the law in Washington or elsewhere has changed significantly within the previous 10 years.

Any member completing such course shall be entitled to credit towards mandatory continuing legal education requirement for all CLE credits for which such reinstatement/admission course is accredited. It is the member's responsibility to pay the cost of attending the course. The member shall comply with all registration, payment, attendance, and other requirements for such course, and shall be responsible for obtaining proof of attendance at the entire course and submitting or having such proof submitted to the Bar.

J. REINSTATEMENT AFTER DISBARMENT.

Applicants seeking reinstatement after disbarment must file a petition for reinstatement and otherwise comply with the requirements of the APRs relating to reinstatement after disbarment. If the petition is granted and reinstatement is

recommended, the petitioner must take and pass the Washington Bar examination and comply with all other admission and licensing requirements for the year in which the petitioner is reinstated.

K. REINSTATEMENT AFTER RESIGNATION IN LIEU OF DISBARMENT OR DISCIPLINE.

No former member shall be allowed to be readmitted to membership after entering into a resignation in lieu of discipline or disbarment pursuant to the ELC. Persons who were allowed to resign with discipline pending under former provisions of these bylaws prior to October 1, 2002, may be readmitted on such terms and conditions as the Board determines, provided that if the person resigned with discipline pending and a prior petition for reinstatement or readmission has been denied, no petition may be filed or accepted for a period of two years after an adverse decision on the prior petition for reinstatement or readmission.

L. READMISSION AFTER VOLUNTARY RESIGNATION.

Any former member who has resigned and who seeks readmission to membership must do so in one of two ways: by filing an application for readmission in the form prescribed by the Board of Governors, including a statement detailing the reasons the member resigned and the reasons the member is seeking readmission, or by seeking reciprocal admission pursuant to APR 18 (if the former member is licensed in another jurisdiction that would qualify for reciprocal admission under that rule).

1. A former member filing an application for readmission after voluntary resignation must:
 - a. pay the application fee, together with such amount as the Board of Governors may establish to defray the cost of processing the application and the cost of investigation; and
 - b. establish that such person is morally, ethically and professionally qualified and is of good moral character and has the requisite fitness to practice consistent with the requirements for other applicants for admission to practice. An application for readmission shall be subject to character and fitness investigation and review as described in APR 20-24, consistent with other applications for admission.
 - c. In addition to the above requirements, if an application for readmission is granted and:
 - i) it has been less than four consecutive years since the voluntary resignation, the applicant must establish:
 - (1) that the former member has earned 45 approved MCLE credits in the three years preceding the

application in a manner consistent with the requirement for one reporting period for an Active member, without including the credits that might otherwise be available for the reinstatement/admission course; and

(2) attend and complete the BOG-approved reinstatement/admission course.

ii) it has been four or more consecutive years since the voluntary resignation, the petitioner must take and pass the Washington Bar examination.

d. Upon successful completion of the above requirements, the member must pay the license fees and assessments and complete and submit all required licensing forms for the year in which the member will be readmitted.

2. A voluntarily resigned former member seeking readmission through reciprocal admission pursuant to APR 18 must comply with all requirements for filing such application and for admission upon approval of such application.

M. BAR EXAM MAY BE REQUIRED.

All applications for reinstatement after disbarment shall be subject to character and fitness review, and taking and passing the Washington Bar examination, pursuant to the provisions of APR 25. All applications for readmission after voluntary resignation shall be subject to character and fitness review pursuant to the provisions of APR 20-24. All applications for readmission to Active membership from Suspended status shall be handled in a similar fashion to applications for readmission from Inactive status. The Character and Fitness Board, and (on review) the Board of Governors, have broad authority to withhold a transfer to Active or to impose conditions on readmission to Active membership, which may include taking and passing the Washington State Bar examination, in cases where the applicant fails to meet the burden of proof required by APR 20-24. The member/former member shall be responsible for the costs of any investigation, bar examination, or proceeding before the Character and Fitness Board and Board of Governors.

JUDICIAL BYLAWS
Current vs. Proposed

CURRENT	PROPOSED
A judge of the courts of record in Washington, or in U.S. courts qualifies,	Same.
Former judge/commissioner/magistrate of the courts of record in Washington, or in U.S. courts qualifies.	Former judges/commissioners/magistrates do <i>not</i> qualify.
Full time requirement for commissioners, magistrates, district/municipal court judges.	Removed so long as do not practice law or mediate/arbitrate for remuneration.
Full-time administrative law judge qualifies.	Only full-time ALJs created by RCW or WAC eligible.
No specific provision for senior status judge but would qualify under current judge of the US courts provision.	Current senior status or recall judge in US Courts qualifies, even if not full time, as long as do not practice law or mediate/arbitrate for remuneration.
Full-time Tribal Court judge qualifies.	Full-time requirement removed so long as do not practice law or mediate/arbitrate for remuneration.
Judicial members are own class, but are deemed inactive members	Judicial is a separate class of membership.
Judicial members cannot practice law.	Same.
Judicial members cannot be appointed or serve on any committee, Board or Task Force of the Bar.	May be appointed to serve on any task force, Institute or council of the Bar.
Judicial members may not debate nor vote in Bar matters and cannot hold a Bar office.	No change.
Judicial members not eligible for membership in Sections.	May be non-voting members in Sections if allowed under the Section's bylaws.
Judicial members have no license fee.	Inactive license fee. LFCP assessment, if ordered by Supreme Court.
	Can be administratively suspended by Supreme Court for failure to pay licensing fee.
All members required to provide registry information.	Same except now specifically mention Judicial members.
Judges, commissioners, and magistrates not required to notify WSBA when leaving position (because "former" position still qualifies).	Judicial members must notify WSBA within 10 days of ending qualifying position and change to different membership class. (See APR 13 also)
Judicial members not required to report MCLE (while on judicial status), but must be current with CJE when leave bench to transfer to active.	Same, but if transfer to Active must comply with general rules for transfer to Active from Inactive - 45 CJs or MCLES and 15 credit "readmission" course. Exception for ALJs who must report CLES while on judicial status.
To change to active, must report CJE within 6 months. If over 6 months, then treat as inactive member.	Must seek change within 10 days and be current with CJs and readmission course.

To change to active, submit application, licensing forms, character and fitness investigation fee.	No change.
To change to active, pay current active license fee and LFCP.	Pay difference between active and judicial fee.
To change to active, pass character & fitness review and disclose any discipline.	No change.
WSBA disciplinary authority controlled by ELC 1.2 and RPC 8.5	Same except now specifically enumerated in the bylaws.

MEMORANDUM

To: BJA, DMCJA, WSBA
From: SCJA Board of Trustees
Re: Proposed WSBA Bylaw Amendments relating to full time elected judges
Dated: August 12, 2010

BACKGROUND: The WSBA Bylaws Committee has been working for some time on a general review and revision of the Bar's bylaws. The committee has proposed extensive amendments to the bylaws relating to judges, and these proposed amendments have drawn vehement opposition from the majority of Superior Court judges. The SCJA Board of Trustees conveyed this opposition to the WSBA Board of Governors, which then withdrew its previous approval of the bylaw amendments and invited SCJA to designate liaisons to work with the Bylaw Committee. While this process has resulted in some positive changes from SCJA's perspective, certain portions of the currently proposed bylaw amendments are still vehemently opposed by our organization.

SPECIFIC OBJECTIONS TO PROPOSED BYLAWS: The SCJA objects to the following proposed amendments to the Bar's Bylaws:

1. Sec 3(h), which purports to require "Judicial members" to "pay any required license fee that may be established by the Bar, subject to approval by the Supreme Court," with "consequences of failing to pay any required fees and assessments shall be consistent with those established for Active members" meaning an administrative suspension imposed by the Supreme Court following notification of non-payment by the Bar.
2. Sec. B, which purports to require "All WSBA members, regardless of membership class, must furnish the information below to the Bar..." The required information includes physical residence address, principal office address and telephone, and "such other data as the board of Governors or Washington Supreme Court may from time to time require of each member," and further requires that the Executive Director be advised promptly "within 10 days of such change." Section B also requires the Executive Director to keep records of all members, including the physical address furnished by each member.

In addition to general concerns about Bar mandates, SCJA has serious concerns that mandatory reporting of judges' home addresses poses a security risk.¹

¹ The Public Disclosure Commission recognizes the legitimacy of these security concerns, and regularly permits judges (on request) to keep their residence street address confidential when filing the mandatory annual PDC report.

3. Section G(1)(c), which requires “Judicial members” to pay “the annual license fee required of Inactive-Lawyers members”.
4. Section G(2), which requires “Members” to “pay the Lawyers Fund for Client Protection assessment, and any other assessments, as ordered by the Supreme Court” to the extent that judges are considered to be “members” of the WSBA.
5. Section C(2)(c) and (d), insofar as they require judges who leave the bench and wish to rejoin the Bar as “Active” members to pass a character and fitness review equivalent to that required of applicants for admission to the Bar, and require 15 hours of CLE credits in addition to the 45 hours of CLE/CJE credits over the preceding three years, as a condition of becoming an Active member of the Bar.

While the SCJA Board of Trustees recognizes that the Bar has inherent authority to determine the requirements for membership and re-admission to membership for those who wish to practice law in Washington State, we do not see the need for these requirements. Unlike WSBA members on “Inactive” status, sitting judges deal daily with complex issues of evidence, procedure, and substantive law. The Bar has not articulated any reason to believe that retiring judges require additional education in order to qualify to practice law.

Nor has the Bar provided any justification for requiring retiring judges to pass a character and fitness review before becoming “Active” members of the Bar Association. Many of our members regard this requirement as highly disrespectful and offensive.

HISTORICAL PERSPECTIVE: The current WSBA Bylaws are deliberately vague about the status of judges and the relationship between individual judges and the Bar. The current bylaws refer to judges as “Judicial members”, but place no requirements or mandates of any kind on sitting judges.

Section 3 of the current bylaw states that Section 3(f) of the current bylaws states:

An active [WSBA] member may become a Judicial member of the Bar by notifying the Executive Director when the member is one of the following:

- a. A judge or former judge of the courts of record in the State of Washington . . .

Section 3(f) states:

Judicial members are deemed inactive members and shall not engage in the practice of law. **Judicial members are not required to pay the annual membership fee** required of inactive members in Article II, Section E of these Bylaws.

(emphasis added). Note that the word “deemed” is used in Sec. 3(f). According to the dictionary, “deem” means: (1) to form or have an opinion; judge; think, and (2) to hold as an opinion; think; regard. In other words, judges were **regarded** as “inactive” members of the Bar, but were not actually denominated as inactive members of the Bar; nor did the Bar purport to require “judicial members” to register annually while in judicial office, nor to pay dues or assessments.

Most members of SCJA historically have viewed themselves as being on hiatus from the WSBA during the terms of their service as judicial officers. We believe that this is the intent of the current bylaws, and that there is no good reason to change this.

LEGAL ANALYSIS: The issue that underlies SCJA’s objections to the proposed bylaw amendments, and the primary source of disagreement between SCJA’s membership and the WSBA, involves an unresolved legal issue: Are Superior Court judges “required” by law to be members of the WSBA while serving as judges? The Bylaw Committee, the Bar’s Executive Director and General Counsel, and at least some members of the Board of Governors, believe that Article IV, Section 17 of the Washing Constitution requires sitting Superior Court judges to be members of the WSBA. SCJA disagrees with this contention.

Article IV, Section 17 states:

ELIGIBILITY OF JUDGES. No person shall be eligible to the office of judge of the supreme court, or judge of a superior court, unless he shall have been admitted to practice in the courts of record of this state, or of the Territory of Washington.

The appropriate interpretation of Article IV, Section 17 has been considered by the Washington Supreme Court only once: in *State v. Monfort*, 93 Wash. 4 (1916). This 94 year old case held that a lawyer who was suspended by the Bar was not eligible to have his name on the ballot for election to the Superior Court.²

² Washington did not have a mandatory bar until 1933, when the State Bar Act (Chapter 2.48 RCW) was passed. Thus, there was no mandatory bar in existence when the *Monfort* case was decided.

The WSBA’s website contains an interesting article by General Counsel Robert Weldon about the history of the Washington State Bar Association. Relevant portions are excerpted below:

The Washington Bar Association was formed in January 1888, in the last year of the Washington Territory. In those days, all lawyers who had cases set for argument before the Supreme Court were required to be present at the beginning of the Court term in January. Sometimes, lawyers were required to wait for days or weeks for their cases to be called on the calendar.

It was in this setting that a group of lawyers met in the Supreme Court chambers in Olympia, January 19, 1888, to form the Washington Bar Association. (The name was changed to the Washington State Bar Association in 1890). The association originally consisted of 35 lawyers, and membership cost \$5 per year. By 1913, there were about 600 members of the Bar. At that time, it was a purely voluntary organization and did not include all lawyers admitted to practice.

In response to Mr. Monfort's argument that he had been admitted to the bar, and therefore qualified under the literal reading of Art. IV, Sec 17, the Court stated (emphasis added):

When the Constitution was framed and adopted, it was clearly not the intention of the people in adopting it to authorize a person to be elected judge who was not, at the time of his election, entitled to practice as an attorney in the courts of record in the state.

...

We think it is clear that the Constitution meant to say that no person is eligible to the office of judge of the superior court unless he shall have been admitted to practice in the courts of record in this state, which means that he not only shall have been, but that he is, at the time he becomes a candidate or is required to qualify as such judge, entitled to practice in the courts of this state.

93 Wash at 6-7. *Monfort* clearly stands for the proposition that a **lawyer must be "entitled to practice in the courts of record in this state" in order to be eligible for election to the Superior Court.** *Monfort* cannot be construed to mean that a sitting Superior Court judge must be a member of the WSBA in order to serve as a judge, or to qualify for re-election to the bench. On the contrary, *Monfort* clearly holds that to be eligible for election to the Superior Court, the Constitution requires that a lawyer be "entitled to practice in the courts of this state" – something that sitting judges are not permitted to do, even during the years when they must file for re-election. Moreover, only "active" members of the Bar Association are entitled to practice law in Washington – mere "membership" in the Bar Association is not sufficient. If judges truly had to

By 1930, as more lawyers were admitted to practice, it was proposed that the Bar Association have a paid executive secretary and a paid representative in Olympia when the Legislature was in session, that it have an official publication, and that it be incorporated. George McCush of Bellingham was appointed chairperson of the Incorporation Committee. That committee reported back with a draft of a Bar Association Act to be proposed to the Legislature. Because the Washington Constitution prohibits creation of corporations by special act, the committee proposed that the Bar Association be created as an agency of the state. The proposed act would create "a complete integrated (i.e., mandatory membership) Bar which is officially organized, self-governed and all inclusive." It proposed an annual license fee of \$5.

This proposal was widely debated over the next few years. One issue was whether the bar should be established directly by legislation (the "State Bar Act"), indirectly by legislation authorizing integration by Supreme Court rule (the "Short Bar Bill") or simply by court rule. Ultimately, the drafting was taken up by Seattle attorney Alfred J. Schweppe, former Dean of the University of Washington School of Law. He argued forcefully and successfully for legislative establishment of the Bar. In 1933 the State Bar Act (Ch. 2.48 RCW) was enacted.

be “entitled to practice law” in order to qualify for re-election, then every full time District Court, Municipal Court, Superior Court, and Court of Appeals judge, and every Supreme Court justice who has completed his or her first term in office would be ineligible to run for reelection, and would currently be holding judicial office in violation of the constitution. Neither Article IV, Sec. 17, nor the *Monfort* case should be construed to yield such an absurd result.

POLICY CONSIDERATIONS: SCJA believes it is important that judges have a close working relationship with the Bar, and this has historically been the case. However, this close working relationship should not encompass “membership” in the WSBA, especially if conditions of such “membership” involve the imposition of requirements or mandates on the judiciary.

While all Superior Court judges were lawyers before taking judicial office, there are fundamental differences between lawyers and judges. Most pointedly, lawyers practice law, while judges are prohibited from doing so. Lawyers are advocates for their clients and causes, while judges must be impartial neutrals. While lawyers and judges share many common goals and interests, their roles in the legal system and their “voices” are inherently different. The Bar certainly should not be speaking for judges, and judges likewise should not be speaking for the Bar.

For example, the Bar’s Board of Governors periodically adopts resolutions or proclamations on matters of public interest, and we recognize that it is the right and proper role of the Bar’s BOG to make decisions concerning such resolutions, if they are in some way connected with the administration of justice. However, judges are ethically prohibited from taking public positions on many such issues.³ SCJA is concerned that if judges are required to be “members” of the WSBA, then resolutions adopted by the WSBA will – intentionally or not – be construed as positions taken by “our” organization on “our” behalf. This is a serious concern, and not one that a *Keller* deduction will sufficiently address.

The crux of the SCJA’s objections to the proposed WSBA bylaw amendments is that it is inappropriate for the Bar Association – which exists to regulate lawyers and the practice of law – to exercise authority over sitting judges by adopting mandates or requirements that judges must observe. SCJA contends that its members are answerable to the Supreme Court and to the Judicial Conduct Commission, but not to the Washington State Bar Association.

Moreover, SCJA believes it is inappropriate for the Bar to be placing requirements or mandates of any kind on sitting judges. If there is no Constitutional requirement that judges be members of the WSBA, then the WSBA has no authority to mandate that judges do (or refrain from doing) anything, including payment of dues and assessments, registering their addresses with the Bar, etc.⁴

³ For example, in 2008, the Bar BOG adopted a resolution condemning the so-called Washington Defense of Marriage Act RCW 26.04.020(1)(c) and RCW 26.04.010(1). The BOG is currently considering whether to adopt a resolution to condemn Arizona’s recently enacted immigration law. SCJA believes that Bar resolutions concerning such issues are inappropriate as applied to the judiciary.

⁴ If the WSBA believes that it is providing goods or services to judges that pose an expense to the Bar Association, such as the Bar News or the availability of the Lawyers Assistance Program (LAP), then

For these reasons, the SCJA respectfully proposes the following alternatives to the bylaw amendments to which our association objects:

SCJA Counterproposal for Amendments to Bylaws relating to Judges

3. Judicial

- a. An Active member may transfer to Judicial status⁵ with the Bar by notifying the Executive Director when the member is one of the following:
 - 1. A current judge, commissioner, or magistrate judge of the courts of record in the State of Washington, or the courts of the United States, including Bankruptcy courts;
 - 2. A current judge, commissioner, or magistrate in the district or municipal courts in the State of Washington, provided that such position requires the person to be a lawyer;
 - 3. A current senior status or recall judge in the Courts of the United States;
 - 4. An administrative law judge, which shall be defined as either:
 - (a) Current federal judges created under Article I of the United States Constitution, excluding Bankruptcy court judges, or created by the Code of Federal Regulations, who by virtue of their position are prohibited by the United States Code and/or the Code of Federal Regulations from practicing law; or
 - (b) Full-time Washington State administrative law judges in positions created by either the Revised Code of Washington or the Washington Administrative Code; or
 - (c) A current Tribal Court judge in the State of Washington.
- b. Members not otherwise qualified for judicial status under (1) through (4) above and who serve full-time, part-time or ad hoc as *pro tempore* judges, commissioners or magistrates are not eligible for judicial status.

provisions can be made for the mandatory judicial associations to reimburse the WSBA for such expenses, or for judges to forego such goods and services, or to utilize them on a voluntary "fee for service" basis.

⁵ Reference is made to "person in judicial status" rather than to "judicial member" in order to clarify that while serving as a judge, a judicial officer is not a "member" of the WSBA.

- c. Persons on Judicial status, whether serving as a judicial officer full-time or part-time, may not engage in the practice of law and may not engage in mediation or arbitration for remuneration.
- d. Persons on Judicial status may:
 - 1. Practice law only where permitted by the then current Washington State Code of Judicial Conduct as applied to full-time judicial officers;
 - 2. Be appointed to serve on any task force, council or Institute of the Bar; and
 - 3. Be non-voting members in WSBA Sections, if allowed under the Section's bylaws.
- e. Nothing in these bylaws shall be deemed to prohibit a judicial member from carrying out his or her judicial duties.
- f. Persons on Judicial status must notify the Bar within 10 days when they retire or when their judicial employment has changed such that they are no longer eligible for Judicial status, and must apply to change to a membership class or to resign.
- g. Persons on Judicial status desiring to change to Active or Emeritus/Pro Bono membership must disclose, at the time of the requested transfer, any pending public charges and/or substantiated public discipline of which the person seeking to transfer to active status is aware. Should such information warrant further investigation, or should the Bar learn of such information from the Judicial Conduct Commission, then the person wishing to transfer to Active or Emeritus/Pro Bono status may be required to pass a character and fitness review essentially equivalent to that required of applicants for admission to the Bar.

Comment: subsections (h) and (j) were deleted deliberately; subsection (i) relates only to administrative law judges, and the SCJA takes no position regarding status of ALJs.

B. REGISTER OF MEMBERS.

- 1. All WSBA members, regardless of membership class, but not to include persons on judicial status, must furnish the information below to the Bar:
 - a. physical residence address;
 - b. principal office address and telephone;
 - c. such other data as the Board of Governors or Washington Supreme Court may from time to time require of each member and shall promptly advise the

Executive Director in writing of any change in this information within 10 days of such change.

2. Persons on judicial status are encouraged, but not required, to furnish the information in Section B(1)(b) and (c) above to the Bar on an annual basis when requested to do so by the Bar.
3. Any member residing out-of-state must file with the Bar, on such form as the Bar may prescribe, the name and physical street address of a designated resident agent within the State of Washington for the purpose of receiving service of process ("resident agent"). Service to such agent shall be deemed service upon or delivery to the lawyer. The member must notify the Bar of any change in resident agent within 10 days of any such change. Any member required to designate a resident agent who fails to do so, or who fails to notify the Bar of a change in resident agent, shall be subject to administrative suspension pursuant to these bylaws and/or the Admission to Practice Rules.
4. Any member (not to include persons on judicial status) who fails to provide the Bar with the information required to be provided pursuant to these bylaws, or to notify the Bar of any changes in such information within 10 days, shall be subject to administrative suspension pursuant to these bylaws and/or the Admission to Practice Rules.

C. CHANGE OF MEMBERSHIP CLASS TO ACTIVE.

2. Transfer from Judicial to Active.

A person in Judicial Status may request transfer to Active. Upon the resignation, retirement, or completion of such person's term of judicial office, such person must notify the Bar within 10 days, and if such person desires to reactive his or her affiliation with the WSBA, must request admission to one of the membership classes within the Bar. A person in judicial status may transfer to Active by:

- a. paying an application and/or investigation fee and completing and submitting an application form, all required licensing forms, and any other required information;
- b. paying the then current Active license fee, including any mandatory assessments;
- c. passing a character and fitness review, if grounds exist for referral to the character and fitness review committee based on information provided by the judge wishing to transfer to Active or from the Judicial Conduct Commission; and

- d. providing evidence of having completed 45 CLE, CJE, or a combination of CLE and CJE hours during the three year period immediately preceding transfer to Active status.

D. CHANGE OF MEMBERSHIP CLASS TO JUDICIAL.

An Active member may request to transfer to Judicial status by submitting a written request on judicial letterhead and by complying with the provisions of these Bylaws.

E. ANNUAL LICENSE FEES AND ASSESSMENTS.

1. License Fees.

c. Persons on Judicial Status

Persons on judicial status are exempt from any license fees or assessments that the Bar may levy on lawyer members.



WASHINGTON
COURTS

District and Municipal Court Judges' Association

President

JUDGE STEPHEN E. BROWN
Grays Harbor County District Court
102 W Broadway Avenue
Montesano, WA 98563-3621
(360) 249-3441
(360) 249-6382-FAX

President-Elect

JUDGE GREGORY J. TRIPP
Spokane County District Court
Public Safety Building
1100 W Mallon Avenue
Spokane, WA 99260-0150
(509) 477-2965
(509) 477-6445-FAX

Vice-President

JUDGE SARA B. DERR
Spokane County District Court
Public Safety Building
1100 W Mallon Avenue
Spokane, WA 99260-0150
(509) 477-2959
(509) 477-6445-FAX

Secretary/Treasurer

JUDGE RICHARD B. KAYNE
Medical Lake Municipal Court
124 S Lefevre Street
PO Box 369
Medical Lake, WA 99022-0369
(509) 565-5000
(509) 565-5008-FAX

Past President

JUDGE GLENN M. PHILLIPS
Kent Municipal Court
1220 Central Avenue S
Kent, WA 98032-7426
(253) 856-5730
(253) 856-6730-FAX

Board of Governors

JUDGE FRANK V. LA SALATA
King County District Court
(206) 205-9200

JUDGE JUDY RAE JASPRICA
Pierce County District Court
(253) 798-3313 (253) 798-6616-FAX

JUDGE G. SCOTT MARINELLA
Columbia County District Court
(509) 382-4812 (509) 382-2490-FAX

JUDGE VERONICA ALICEA-GALVAN
Des Moines Municipal Court
(206) 878-4597 (206) 870-4387-FAX

JUDGE PATRICK R. BURNS
Auburn Municipal Court
(253) 931-3076 (253) 804-5011-FAX

JUDGE LINDA S. PORTNOY
Lake Forest Park Municipal Court
(206) 364-7711 (206) 364-7712 FAX

COMM. ADAM EISENBERG
Seattle Municipal Court
(206) 684-8709 (206) 233-0056-FAX

JUDGE SCOTT K. AHLF
Olympia Municipal Court
(360) 753-8312 (360) 753-8775-FAX

JUDGE R. W. BUZZARD
Lewis County District Court
(360) 740-1200 (360) 740-2779-FAX

August 17, 2010

Honorable Barbara A. Madsen
Chief Justice, Supreme Court
Temple of Justice
PO Box 40929
Olympia, Washington 98504-0929

RE: Amendment to CrRLJ 3.1(d)(4), Effective September 1, 2010

Dear Chief Justice Madsen:

I am writing to you on behalf of the members of the District and Municipal Court Judges' Association to request that the Supreme Court delay the effective date of the recently adopted amendment to CrRLJ 3.1(d)(4).

The concern is that the Supreme Court has not made known the "Standards for Indigent Defense Services" that it intends to adopt pursuant to the rule, leaving the courts without sufficient opportunity to prepare for implementation of the rule. We believe that the effective date of the rule should be delayed until such time as appropriate standards can be developed, vetted, and understood by our various jurisdictions around the state.

RCW 10.101.030 provides that each county and city adopt standards for the delivery of public defense services. Indigent defense services are provided under local standards adopted under this provision. Any change would have a substantial impact to most, if not all, jurisdictions.

My understanding is that the WSBA Committee on Public Defense is reviewing standards and procedures for recommendation to the Supreme Court. The District and Municipal Court Judges Association would urge the Supreme Court to provide an opportunity to review and comment on any proposed "Standards for Indigent Defense Services" prior to their adoption.

Honorable Barbara A. Madsen
August 17, 2010
Page 2

Thank you for your consideration.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Stephen E. Brown". The signature is fluid and cursive, with the first name "Stephen" and last name "Brown" clearly distinguishable.

Stephen E. Brown, President
District and Municipal Court Judges' Association

cc: Honorable Stephen M. Warning, President, SCJA
Honorable Michael Lambo, Co-Chair, BJA
Honorable Barbara Linde, Presiding Judge, King County District Court

RULE CrR 3.1
RIGHT TO AND ASSIGNMENT OF LAWYER

(a) Types of Proceedings. The right to a lawyer shall extend to all criminal proceedings for offenses punishable by loss of liberty regardless of their denomination as felonies, misdemeanors, or otherwise.

(b) Stage of Proceedings.

(1) The right to a lawyer shall accrue as soon as feasible after the defendant is taken into custody, appears before a committing magistrate, or is formally charged, whichever occurs earliest.

(2) A lawyer shall be provided at every stage of the proceedings, including sentencing, appeal, and post-conviction review. A lawyer initially appointed shall continue to represent the defendant through all stages of the proceedings unless a new appointment is made by the court following withdrawal of the original lawyer pursuant to section (e) because geographical considerations or other factors make it necessary.

(c) Explaining the Availability of a Lawyer.

(1) When a person is taken into custody that person shall immediately be advised of the right to a lawyer. Such advice shall be made in words easily understood, and it shall be stated expressly that a person who is unable to pay a lawyer is entitled to have one provided without charge.

(2) At the earliest opportunity a person in custody who desires a lawyer shall be provided access to a telephone, the telephone number of the public defender or official responsible for assigning a lawyer, and any other means necessary to place the person in communication with a lawyer.

(d) Assignment of Lawyer.

(1) Unless waived, a lawyer shall be provided to any person who is financially unable to obtain one without causing substantial hardship to the person or to the person's family. A lawyer shall not be denied to any person merely because the person's friends or relatives have resources adequate to retain a lawyer or because the person has posted or is capable of posting bond.

(2) The ability to pay part of the cost of a lawyer shall not preclude assignment. The assignment of a lawyer may be conditioned upon part payment pursuant to an established method of collection.

(3) Information given by a person to assist in the determination of whether the person is financially able to obtain a lawyer shall be under oath and shall not be available for use by the prosecution in the pending case in chief.

(4) Before appointing a lawyer for the indigent person or at the first appearance of the lawyer in the case, the court shall require the lawyer to certify to the court that he or she complies with the applicable Standards for Indigent Defense Services to be approved by the Supreme Court.

(e) Withdrawal of Lawyer. Whenever a criminal cause has been set for trial, no lawyer shall be allowed to withdraw from said cause, except upon written consent of the court, for good and sufficient reason shown.

(f) Services Other Than a Lawyer.

(1) A lawyer for a defendant who is financially unable to obtain investigative, expert or other services necessary to an adequate defense in the case may request them by a motion to the court.

(2) Upon finding the services are necessary and that the defendant is financially unable to obtain them, the court, or a person or agency to which the administration of the program may have been delegated by local court rule, shall authorize the services. The motion may be made ex parte and, upon a showing of good cause, the moving papers may be ordered sealed by the court and shall

remain sealed until further order of the court. The court, in the interest of justice and on a finding that timely procurement of necessary services could not await prior authorization, shall ratify such services after they have been obtained.

(3) Reasonable compensation for the services shall be determined and payment directed to the organization or person who rendered them upon the filing of a claim for compensation supported by affidavit specifying the time expended and the services and expenses incurred on behalf of the defendant, and the compensation received in the same case or for the same services from any other source.

[Amended effective September 1, 1986; September 1, 1995, amended effective September 1, 2010.]

Comment

Supersedes RCW 10.01.110; RCW 10.40.030; RCW 10.46.050.

RULE CrRLJ 3.1
RIGHT TO AND ASSIGNMENT OF LAWYER

(a) Types of Proceedings. The right to a lawyer shall extend to all criminal proceedings for offenses punishable by loss of liberty regardless of their denomination as felonies, misdemeanors, or otherwise.

(b) Stage of Proceedings.

(1) The right to a lawyer shall accrue as soon as feasible after the defendant has been arrested, appears before a committing magistrate, or is formally charged, whichever occurs earliest.

(2) A lawyer shall be provided at every critical stage of the proceedings.

(c) Explaining the Availability of a Lawyer.

(1) When a person has been arrested he or she shall as soon as practicable be advised of the right to a lawyer. Such advice shall be made in words easily understood, and it shall be stated expressly that a person who is unable to pay a lawyer is entitled to have one provided without charge.

(2) At the earliest opportunity a person in custody who desires a lawyer shall be provided access to a telephone, the telephone number of the public defender or official responsible for assigning a lawyer, and any other means necessary to place him or her in communication with a lawyer.

(d) Assignment of Lawyer.

(1) Unless waived, a lawyer shall be provided to any person who is financially unable to obtain one without causing substantial hardship to the person or to the person's family. A lawyer shall not be denied to any person merely because his or her friends or relatives have resources adequate to retain a lawyer or because he or she has posted or is capable of posting bond.

(2) The ability to pay part of the cost of a lawyer shall not preclude assignment. The assignment of a lawyer may be conditioned upon part payment pursuant to an established method of collection.

(3) Information given by a person to assist in the determination of whether he or she is financially able to obtain a lawyer shall be under oath and shall not be available for use to the prosecution in the pending case in chief.

(4) Before appointing a lawyer for an indigent person, or at the first appearance of the lawyer in the case, the court shall require the lawyer to certify to the court that he or she complies with the applicable Standards for Indigent Defense Services to be approved by the Supreme Court.

(e) Withdrawal of Lawyer. Whenever a case has been set for trial, no lawyer shall be allowed to withdraw except upon consent of the court for good cause shown and upon substitution of another lawyer or upon the defendant's knowing and voluntary decision to proceed without a lawyer.

(f) Services Other Than Lawyer.

(1) A lawyer for a defendant who is financially unable to obtain investigative, expert or other services necessary to an adequate defense in the case may request them by a motion to the court.

(2) Upon finding that the services are necessary and that the defendant is financially unable to obtain them, the court, or a person or agency to which the administration of the program may have been delegated by local court rule, shall authorize the services. The motion may be made ex

parte, and, upon a showing of good cause, the moving papers may be ordered sealed by the court, and shall remain sealed until further order of the court. The court, in the interest of justice and on a finding that timely procurement of necessary services could not await prior authorization, shall ratify such services after they have been obtained.

(3) Reasonable compensation for the services shall be determined and payment directed to the organization or person who rendered them upon the filing of a claim for compensation supported by affidavit specifying the time expended and the services and expenses incurred on behalf of the defendant, and the compensation received in the same case or for the same services from any other source.

[Amended effective September 1, 1995; amended effective September 1, 2010.]

RULE JuCR 9.2
ADDITIONAL RIGHT TO REPRESENTATION BY LAWYER

(a) Retained Lawyer. Any party may be represented by a retained lawyer in any proceedings before the juvenile court.

(b) Child in Need of Services Proceedings. The court shall appoint a lawyer for indigent parents of a juvenile in a child in need of services proceeding.

(c) Dependency and Termination Proceedings. The court shall provide a lawyer at public expense in a dependency or termination proceeding as follows:

(1) Upon request of a party or on the court's own initiative, the court shall appoint a lawyer for a juvenile who has no guardian ad litem and who is financially unable to obtain a lawyer without causing substantial hardship to himself or herself or the juvenile's family. The ability to pay part of the cost of a lawyer shall not preclude assignment. A juvenile shall not be deprived of a lawyer because a parent, guardian, or custodian refuses to pay for a lawyer for the juvenile. If the court has appointed a guardian ad litem for the juvenile, the court may, but need not, appoint a lawyer for the juvenile.

(2) Upon request of the parent or parents, the court shall appoint a lawyer for a parent who is unable to obtain a lawyer without causing substantial hardship to himself or herself or the juvenile's family. The ability to pay part of the cost of a lawyer shall not preclude assignment.

(d) Juvenile Offense Proceedings. The court shall provide a lawyer at public expense in a juvenile offense proceeding when required by RCW 13.40.080(10), RCW 13.40.140(2) or rule 6.2.

(1) Before appointing a lawyer for an indigent person or at the first appearance of the lawyer in the case, the court shall require the lawyer to certify to the court that he or she complies with the applicable Standards for Indigent Defense Services to be approved by the Supreme Court.

[Amended effective September 1, 1987; September 1, 1997; September 1, 2010.]



August 16, 2010

TO: Board for Judicial Administration

FROM: BJA GR 29 Work Group

RE: Recommendations

The BJA convened the GR 29 Work Group with the following charge:

- Review GR 29 for possible amendment to establish a process for investigating and resolving workplace related complaints against judges.
- Any recommended process should account for multi-county judicial districts as well as contracting cities and hosting jurisdictions under Ch. 3.50 RCW.
- Develop a substantive implementation proposal consistent with the recommendations.
- Involve such other stakeholders as the work group determines is necessary to develop a realistic and acceptable proposal.

Work Group Membership:

Judge Rebecca Baker, SCJA, Chair
Judge Sara Derr, DMCJA
Judge David Larson, DMCJA
Judge Kathleen O'Connor, SCJA

In formulating its recommendations, the work group met twice. The second meeting included Reiko Callner, Executive Director of the Commission on Judicial Conduct.

Creation of the work group was prompted by a proposal from Judge Larson to revise General Rule 29 to provide a process to address workplace-related complaints against judges when acting in their administrative capacity.

The work group agreed that rather than attempting to amend GR 29 to address those concerns, a task force or work group should be formed to create standards of conduct for judges when acting in their administrative capacity. The membership of such a task force

STATE OF WASHINGTON

or work group should include court administrators and managers and possibly county clerks in addition to judges. Eventually it may also be useful to have discussions with civil prosecuting attorneys and the associations of cities and counties to assess political feasibility, as public trust and confidence implications should be considered.

The GR 29 work group also recommends that a benchbook be created for judges to offer guidance and policies when serving in their administrative capacity, and that training be provided for judges on this topic.

Creation of such standards may also raise the need to clarify the existing mechanisms for investigating workplace-related complaints against judges. It may also reveal the need for changes to GR 29 once standards are in place. However, the work group agreed that exploration of possible changes to the rule should be the last step in the process rather than the first.

In the work group's view, the best case scenario would be to have the standards adopted and judicial training on the standards ready to be presented at the trial court associations' spring 2011 conferences.

STATE OF WASHINGTON

1206 Quince Street SE • P. O. Box 41170 • Olympia, WA 98504-1170
360-753-3365 • 360-956-5700 • www.courts.wa.gov



MUNICIPAL COURT
33325 8th Avenue South • PO Box 9717
Federal Way, WA 98063-9717
(253) 835-3000
www.cityoffederalway.com

August 12, 2010

RE: GR 29 Work Group Recommendations

Chief Justice Madsen, Judge Lambo, and BJA Members:

I would like to add personal comments regarding my utmost support for the direction we are heading on this issue. My original proposal focused on the investigation process, but the work group's recommendation focuses on prevention as well as process.

My original proposal was made almost a year and a half ago and the approach I took was dictated by the saga in our court that almost resulted in its elimination by the city council. I am not offended in the least with heading in this different direction. With that said, I still believe that a solid complaint and investigation process is an absolute necessity in any guidelines or rules developed.

The courts are asked on a daily basis to sit in judgment on workplace related claims. Therefore, the courts should be a model for the rest of society when it comes to human resource management, including investigation and remediation of complaints.

I want to emphasize that what we do here will be as much about public confidence as it will be about the private respect we owe our staff in the workplace. Judicial independence is threatened when the public as well as the legislative and executive branches are given reason to doubt our ability to manage the business of the court, including the proper management of the workplace.

The reality is that "prevention" also includes providing for a workable process to address workplace complaints. The cautionary tale from what happened over a year and a half period in our court that lead to litigation all the way to the State Supreme Court is that the handling of the complaint can create problems and erode public confidence more than the complaint itself.

I volunteer to be part of the continuing effort to turn this recommendation into reality.

Thank you.

Judge David Larson
Federal Way Municipal Court